

Protest of	) Date: October 9, 1992
	)
STEPHEN W. DU PUY	)
	)
Solicitation No. 380-103-92	) P.S. Protest No. 92-51

### DECISION

Mr. Stephen W. Du Puy protests the contracting officer's determination that he in is a nonresponsible bidder on Solicitation No. 380-103-92 for the transportation of mail between Columbia, TN, and Duck River, TN. The solicitation was issued May 13, 1992, by the Memphis, TN, Transportation Management Service Center and called for one round trip between the termini daily, except Sundays and holidays, making two intermediate stops. Service was to be provided using one straight body truck with a payload weight of 1,500 pounds.

Mr. Du Puy was the low bidder on the route at an annual rate of \$12,400.00. The second low bid was \$15,941. By letter dated June 16, the contracting officer advised Mr. Du Puy that he was found nonresponsible "based on your failure to show any past experiences [sic] in mail hauling and[/]or commercial deliveries." This timely protest followed.

In his protest, Mr. Du Puy asserts that past experience in mail hauling should not be required for a route of this size, but notes that both he and his proposed driver have had experience driving vehicles of the type involved in the contract. Responding to concerns expressed during a pre-award interview that his residence (Ludlow Falls, OH) was too remote from the route to allow adequate personal route supervision, Mr. Du Puy advises that the second low bidder, who was awarded the contract, lives in Grevada, MS, some five hours from Tennessee, a travel time which Mr. DuPuy views as similar to the seven hours which separates him from the route. He adds that members of his family reside in Columbia, TN, and can provide local assistance. Mr. Du Puy refers to the courses in education and business which have prepared him for this sort of opportunity and his personal financial statement as establishing his financial ability to perform.

The contracting officer's statement notes that once fuel costs and labor costs are subtracted from Mr. Du Puy's bid, only \$3,783 is left for other operational costs, and that it was his opinion "[b]ased on current economic trends" that "there were not adequate funds to hire additional support personnel and to manage the route from a remote location." The contracting officer asserts that this lack of funds, Mr. DuPuy's remote location, and his lack of experience were all determining factors in his inability to establish Mr. Du Puy's responsibility.<sup>1/</sup>

Responding to the contracting officer's statement,<sup>1/</sup> Mr. Du Puy objects to the contracting officer's characterization of the adequacy of his available funds, noting that he demonstrated significantly more available funds than the second low bidder.<sup>1/</sup> Concerning the remoteness of his location, Mr. Du Puy asserts that the previous contractor on the route, a Mr. Harris, had operated the route from Illinois. Mr. Du Puy recites that at the pre-award survey the transportation specialist pointed out the similarity of his price to Mr. Harris' price under the previous contract, asserting that Mr. Harris had given up the route because it wasn't making any money. Mr. DuPuy notes, however, that unlike Mr. Harris, he was not planning to operate the route with new equipment, and that the amount available for operating costs was more than adequate.

Mr. Du Puy restates his educational and business experience, and complains that he was not previously requested to detail any previous courier experience.<sup>1/</sup> Finally, he complains that the pre-award interview of the second low bidder occurred prior to his interview, and complains of the attitude of the transportation specialist who conducted the interview. He asks for a prompt reversal of the contracting officer's determination.

## Decision

<sup>1/</sup> The contracting officer's statement is accompanied by a page of handwritten notes by the transportation specialist who conducted the pre-award surveys of the two lowest bidders. As to Mr. Du Puy, those notes reflect concern about his lack of experience, his ability to operate the route from Ludlow Falls, and the lack of operating funds available. The transportation specialist deemed Mr. DuPuy nonresponsible. As to the second low bidder, the notes reflect the adequacy of his funding, vehicle, availability and experience, and include a recommendation for award.

<sup>2/</sup> Initially, Mr. Du Puy objects to the timeliness of the statement, both as submitted to this office and as furnished to him. The protester is correct that the report was not timely furnished. The contracting officer is reminded that the contracting officer's report is to be furnished to this office (and a copy of the contracting officer's statement is to be furnished to the protester and any interested parties) within ten working days after he is notified of the protest. Procurement Manual (PM) 4.5.7 e. and g. Further, the statement is to recite (as the statement here did not) that the required distribution has been made. PM 4.5.7 g.

<sup>3/</sup> In this regard, Mr. DuPuy appears to misunderstand the contracting officer's point, which we take to refer not to the bidder's financial resources, but to the adequacy of Mr. DuPuy's bid, a matter which the protester also discusses.

<sup>4/</sup> Despite this objection, Mr. DuPuy has not identified any previous courier experience, except to state, as noted above, his experience driving vehicles of the sort to be used on the contract.

The legal standard by which this office reviews a contracting officer's determination that an offeror is nonresponsible is well settled:

A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. We will recognize the necessity of allowing the contracting officer considerable discretion making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

Craft Products Company, P.S. Protest No. 80-41, February 9, 1981; see also Lock Corporation of America, P.S. Protest No. 89-14, March 10, 1989; Marshall D. Epps, P.S. Protest No. 88-47, September 15, 1988.

PM Section 3.3.1 a. sets forth general standards for determining whether a prospective contractor is responsible, as follows:

Contracts may be awarded only to responsible prospective contractors. The award of a contract based on price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance. To qualify for award, a prospective contractor must affirmatively demonstrate its responsibility. . . .

In addition, in order to be determined responsible, a contractor must have the necessary organization, experience and technical skills, or the ability to obtain them. PM 3.3.1 b.6.

We find that the contracting officer's determination of nonresponsibility in this case was not arbitrary or capricious, and was reasonably based on substantial information. We will not substitute our views for the contracting officer's technical judgment that Mr. Du Puy's general background and training was insufficient to allow him to supervise the route from a remote location. See John F. Tyra, P.S. Protest No. 91-79, November 21, 1991, and cases cited therein.

With respect to the protester's suggestions that his responsibility was determined on a different basis than the second low bidder's, the record does not support the suggestion. It was not unreasonable for the contracting officer to be concerned about the distance between Mr. Du Puy's location and the route, and to consider that factor in his analysis.<sup>1/</sup> The record indicates that the second low bidder also had experience

<sup>5/</sup> In that regard, it was similarly not unreasonable for the contracting officer to determine that Mr. Du

directly related to the performance of delivery services (as an operations manager for a courier service), and had bid an annual rate more likely to provide adequately for operational costs.

Lastly, as to Mr. Du Puy's allegation of impropriety arising out of the sequence of preaward interviews, the allegation is unsupported by any factual evidence. "Mere supposition is considered insufficient to overcome the presumption of regularity attending a contracting officer's performance of his official duties." Robin P. McGinnis, P.S. Protest No. 92-04, March 25, 1992; E.H.O. Trucking, P.S. Protest No. 91-28, June 24, 1991; Penny H. Clusker, P.S. Protest No. 80-37, August 27, 1980. It is not uncommon for contracting officers to conduct preaward investigations of more than one low bidder, and scheduling concerns may well account for the order of the interviews.

The protest is denied.

For the General Counsel:

William J. Jones

Puy's seven-hour travel time was significantly more than the second low bidder's five-hour travel time.